OSMAN & ANOR. v. PUBLIC PROSECUTOR

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Ambrose J.) October 5, 1966]

[Singapore — Federal Court Criminal Appeal No. Y5 of 1965]

Penal Code, s. 302 — Murder — Retracted confession — Admissibility — Conviction on.

International law — Geneva Conventions — Prisoners of war — Whether member of armed forces of foreign belligerent State in civilian clothing who sets off explosives in a non-military building has right to be treated as prisoner of war — 1949 Geneva Convention Relative to the Treatment of Prisoners of War.

Evidence — Confession — Retracted — Admissibility of — Conviction on when justified.

This was an appeal against the conviction of the appellants for murder. The principal ground of appeal was that the appellants were prisoners of war within the meaning of article 4 of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War. It was also urged that the learned trial juge was wrong in law in admitting in evidence the statements made by the appellants to police officers and to a magistrate and that as they had retracted their confessions these could not be made the basis of a conviction unless they were corroborated.

Held: (1) there was ample evidence in this case to support the finding of the trial judge that the appellants were not members of the regular armed forces of the Republic of Indonesia; but even if they were, they had forfeited their rights to be treated as prisoners of war within the meaning of article 4 of 1949 Geneva Convention Relative to the Treatment of Prisoners of War because they had set off explosives while they were in civilian clothing in a non-military building where civilians were doing work unconnected with any war effort;

(2) the learned trial judge was correct in ruling that the statements made by the appellants were admissible in evidence as they were voluntary statements, the making of which was not caused by any inducement, threat, promise or force;

(3) an accused person can be convicted on his own confession, even if it is retracted, if the court is satisfied of its truth and in this case the trial judge, notwithstanding that the confessions were retracted was entitled to come and was amply justified in coming to the conclusion that the confessions were true and in convicting the appellants.

Cases referred to:—

(1) *Stanislaus Krofan & Anor.* v. *Public Prosecutor,* ante, p. 133.

(2) *Yap Sow Keong* v. *Public Prosecutor* [1947] M.L.J. 90.

FEDERAL COURT.

A. J. Braga for the appellants.

Francis Seow (Senior State Counsel) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: The appellants were tried before Chua J. in the High Court of Singapore on three charges under section 302 of the Penal Code for the murder of Susie Choo Kay Hoi, Juliet Goh Hwee Kuang and Yasin bin Kesit on the 10th March, 1965, at about 3.07 p.m. at MacDonald House, Orchard Road, Singapore.

The trial was held under the Emergency (Criminal Trials) Regulations, 1964, and at the conclusion of the trial Chua J. found both appellants guilty and convicted and sentenced them accordingly.

The facts are relatively simple. On 10th March, 1965, at about 3 p.m. some one or more persons placed on the landing of the mezzanine floor of MacDonald House, a non-military building housing a bank and the offices of several commercial firms, about 20 to 25 lbs. of explosives of the nitro-glycerine group, which shortly thereafter exploded resulting in the death of the three persons mentioned in the charges. Thirty other persons who were in the building and outside it at the time of the explosion were also injured, and the lifts and the mezzanine floor of the building were badly damaged.

Two of the deceased, Susie Choo and Juliet Goh, were secretaries working in an office on the mezzanine floor, and the third deceased, Yasin, was a driver who was found seriously injured on the road outside MacDonald House. He died two days later from intracranial and blast injuries.

Three days later, on the morning of 13th March at about 8 a.m. the appellants, who are Indonesians, were found hanging on to a floating plank in the sea off Pulau Sebarok in Malaysian waters and rescued by two men in a bumboat. At the time of their rescue, the first appellant was bare-bodied and wearing a pair of civilian trousers, while the second appellant was wearing a sports shirt and a pair of civilian trousers. On rescue they told the boatmen they were fishermen whose boat had capsized. Soon after they were handed over to the marine police who were in a passing marine police boat and brought ashore to Singapore.

They were then taken to the Marine Police Station. They arrived there at about 11.05 a.m. as also did their two rescuers, Lee Ah Paw and Tay Woon Lim. Inspector Mahmud of the marine police took charge of the appellants and had them placed in the passageway of the lock-up. The inspector, after recording a statement from Tay Woon Lim, the taikong of the bumboat, formally charged the first appellant with having entered a controlled area, an offence under the Internal Security Act. At that time there was a state of "confrontation" by Indonesia against Malaysia.

Immediately thereafter it occurred to the inspector that the appellants might be able to throw some light on the MacDonald House explosion. As a result of questions put to the first appellant and his replies thereto, the inspector contacted the Special Investigation Section of the Criminal Investigation Department. After he had dealt with the first appellant, inspector

Mahmud next charged the second appellant with having entered a controlled area.

At about 1.15 p.m. the same day senior inspector Hill of the Special Investigation Section of the Criminal Investigation Department arrived at the Marine Police Station and took over the investigations from inspector Mahmud.

At 1.25 p.m. Mr. Hill commenced interrogating the first appellant with the assistance of Saruan, a Malay translator attached to the criminal investigation department, as interpreter. The interrogation, which took place in a room in the marine police station in which no one else was present, began with a caution administered by Mr. Hill through the interpreter Saruan to the first appellant in the following terms "You are not obliged to say, but anything you say may be given in evidence". Thereafter, the interrogation took the form of questions and answers which were duly recorded by Mr. Hill and subsequently read back to the first appellant, who signed the recorded questions and answers without making any corrections thereto, although he was expressly informed of his right to do so.

Then Mr. Hill prepared formal charges against the first appellant charging him with the offences of murder of the three deceased persons Susie Choo, Juliet Goh and Yasin, and through the interpreter read these charges out to the first appellant. Mr. Hill then cautioned him through the interpreter in the following terms:—

"Do you wish to say anything in answer to the charges? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence."

The first appellant then volunteered the following statement:

"I reached Singapore on Wednesday at 11.00 a.m. I was not alone. I came with Harun bin Said. We then walked towards the main road to look for a taxi when we got a taxi we went looking for a place to eat. After eating. Actually we went for a drink. After eating Harun and I, I mean after drinking Harun and I went to look for a target (sasaran). After finding the target, we went to eat. After eating we had some rest. After resting we straight went to the building. We then placed the two bundles of explosives (ledakkan) on stairs before reaching the first floor (tengkat satu). After placing the two bundles Harun lighted the fuse (sumbu). After that we left and took a bus. It was raining. I did not hear the explosion."

The caution and the volunteered statement which were recorded by Mr. Hill were signed by the first appellant without any corrections after they had been read back to him.

Another police officer, A.S.P. Khosa, who was assisting Mr. Hill in the MacDonald House investigations, interrogated the second appellant at about 4.20 p.m. on the same day in a room on the first floor of the marine police station, with no one else present except the same interpreter, Saruan. After the usual caution had been administered by Mr. Khosa, the interrogation took the usual form of questions and answers which were duly recorded, eventually read back to the second appellant and signed by him.

As a result of that interrogation, Mr. Khosa prepared three charges of murder against the second appellant in respect of the deaths of Susie Choo, Juliet Goh and Yasin, and at about 5.15 p.m. the same day, through the same interpreter, read out the three charges to the second appellant. Then Mr. Khosa administered the usual formal caution to an accused person through the interpreter to the second appellant, who volunteered a statement which Mr. Khosa recorded. The recorded statement was then read back to the second appellant, who, though he was informed he could ask for corrections to be made if he so desired, signed it without making any corrections. The recorded statement is as follows:—

"On 10.3.65 Wednesday I came to Singapore with Osman bin Haji Mohd. Ali on instructions from 'Komando Operasi Tertinggi Indonesia.' My instructions as a sworn soldier were to carry the given parcel and light it at the electric power station in Singapore or any other building. Because of this instruction I came to Pasir Panjang with Osman and later went to the building where I lighted the fuse to the bundle. The two bundles were placed on a landing at a staircase of the tall building. After lighting the fuse Osman and I took a bus to Jalan Sultan. It was raining when I took the bus. We spent the night in a junk anchored at Tg. Rhu S'pore. I do not know what happened after I lighted the fuse."

At 6.15 p.m. the same day the first appellant in the presence of Mr. Donald Yeo, then a magistrate, made a statement which was recorded by the magistrate with the assistance of an interpreter attached to the magistrates' courts. This statement is in the following terms:—

"I was instructed by Lieutenant Paulus Subekti to cause trouble in Singapore. I left Indonesia on Monday 10.3.65. I entered Singapore on Wednesday. I and a friend went ashore. I then looked for a taxi. We boarded a taxi and went looking for a place to have some refreshment. We had our refreshment at one of the coffee shops in Singapore.

We then boarded another taxi after that to look for suitable targets. After we had found a suitable target we then went to an eating shop and had our lunch.

After our meal we took a parcel containing explosives to the place which we mentioned earlier.

Q. Do you know where?

A. According to my friend the building where we should put explosives was the most suitable place. I do not know what kind of building it was. I was told by my friend the building belonged to a European concern.

Soon after it began to rain. I then put explosives on 1st floor of the building. What I meant was the floor between the ground floor and the 1st floor. My friend then lighted the fuse. As soon as fuse was lighted we left building and boarded the bus. I don't know where the bus took me to. My friend knows his way around Singapore.

We slept in taxi at night. The next day also we slept in taxi. That would be the second day.

On the third day at about 11.00 p.m. we decided to leave Singapore Island. We boarded our motor boat. The boat smashed against a reef or rock. The boat was smashed to pieces. Each of us who got a plank from the smashed boat with its help we started swimming.

The current was strong. Our idea was to go towards the International Waters but because of strong currents we failed to do so.

At about 7.00 a.m. we were still stranded within Malaysian waters. We were then arrested by Malaysian Police.

I appeal for leniency."

At the trial both appellants retracted from the witness box all the statements made by them on the day of their arrest, their defence being that on the day of the explosion they were in Indonesia. In the case of the statements made before the police officers, Mr. Hill and Mr. Khosa their evidence was that, though they signed these statements, the contents thereof were untrue and that they were assaulted and forced to sign them. In the case of the statement made before the magistrate, Mr. Yeo, the first appellant's evidence was that he was taught by the police what he should say before the magistrate, that he was threatened with assault to death if he did not say what he had been taught, and that he was promised his freedom if he did. His evidence was that the contents of that statement were untrue.

The only other evidence material for the purpose of determining the guilt or otherwise of the appellants was the evidence of one Tan Boh Eng, a bus conductor. On 10th March, 1965, he was conductor of Hock Lee Bus No. SH 482, which was operating on the route from Alexandra to Jalan Kubor *via* Orchard Road. One or two minutes past 3 p.m. that day his bus arrived at the bus stop situate a few doors away from MacDonald House. After a short halt there, the bus moved on for a very short distance but was held up by the traffic lights at the junction of Orchard Road and Penang Road, and while it was there the appellants boarded the bus. They alighted from the bus at Victoria Street at a bus stop before the Jalan Kubor terminus. He attended an identification parade conducted by the police on 18th March, 1965, and picked out the appellants as the two persons who had boarded the bus soon after 3 p.m. on 10th March, 1965, when it was held up by the traffic lights at the junction of Orchard Road and Penang Road.

The appellants were represented by one counsel at the trial, and a preliminary point was taken that they were members of the armed forces of Indonesia and were prisoners of war within the meaning of article 4 of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War. This claim was contested by the prosecution and evidence was led by the prosecution and the defence on this issue. The trial judge after hearing the evidence and submissions of counsel came to the conclusion that on the evidence they were not members of the regular armed forces of the Republic of Indonesia. He also held that, even though they were members of the regular armed forces of the Republic of Indonesia, they were not in uniform but in civilian clothing when they were rescued from the sea and captured and were therefore not entitled to the privileges of prisoners of war under that Convention.

The first question raised in this appeal is whether or not the above-mentioned Convention is applicable in Singapore. In the case of *Stanislaus Krofan & Anor.* v. *Public Prosecutor* [1] we have set out our reasons why we consider we should adopt the course of declining to decide this question and we do not propose to restate them now. Suffice it for us to say that the question was not raised before the trial judge and we therefore, proceed to deal with this appeal on the assumption that the Convention is applicable in Singapore.

The next question is whether or not the appellants are prisoners of war within the meaning of article 4. The trial judge on the evidence before him found that the appellants were not members of the regular armed forces of the Republic of Indonesia. Counsel for the appellants has urged upon us that this finding of fact was wrong. We have examined the record with considerable care and are satisfied that there was ample evidence to support the trial judge's finding.

However, in view of the fact that the appellants are Indonesians and were apprehended when there was a state of "confrontation" amounting to armed conflict between that country and Malaysia of which Singapore was then a part, we think it desirable to consider this question on the assumption that they were members of the regular armed forces of the Republic of Indonesia. The facts as found by the trial judge were that they were rescued in Singapore waters and captured in civilian clothing. There can be no doubt at all, assuming they were the persons who placed and set off the explosives at MacDonald House, that they entered and left that building in civilian clothing and were so attired throughout their presence in Singapore. Nor can there be the least doubt that the explosion at MacDonald House was not only an act of sabotage but one totally unconnected with the necessities of war. It seems to us clear beyond doubt that under international law a member of the armed forces of a party to a conflict who, out of uniform and in civilian clothing, sets off explosives in the

territory of the other party to the conflict in a non-military building in which civilians are doing work unconnected with any war effort forfeits his right on capture to be treated as a prisoner of war. In our opinion on the facts of this case the appellants, assuming they were members of the regular armed forces of the Republic of Indonesia, are not prisoners of war within the meaning of article 4 of the 1949 Geneva Convention Relative to the Treatment of Prisoners of War.

It is next urged upon us by counsel for the appellants that the trial judge, having regard to the circumstances existing prior to and at the time they were recorded, was wrong in law in admitting in evidence the statements made by the appellants to the police officers, Mr. Hill and Mr. Khosa, and to the magistrate Mr. Donald Yeo.

At the trial when these statements were tendered in evidence objection was taken by defence counsel that they were inadmissible and that issue was duly tried. The trial judge ruled all these statements to be admissible in evidence as being voluntary statements, the making of which was not caused by any inducement, threat, promise or force.

Before us, it is contended that because all these statements were made within a short period of 5½ hours and on the very day of their arrest and because the appellants were given no food during that period of time the trial judge should not have admitted them in evidence. We find no substance in this argument and we uphold the trial judge's ruling that they were properly admissible in evidence.

The next contention is that the statements amount to confessions, and the appellants having retracted them at the trial, no weight ought to have been attached to them, and there being no other evidence to prove the charges against the appellants, they ought to have been acquitted. It is also urged upon us that a retracted confession cannot be made solely the basis of a conviction unless the same is corroborated and certain Indian authorities were relied upon for this proposition.

We do not agree with the Indian cases cited. We adopt the view of the Malayan Union Court of Appeal in the case of *Yap Sow Keong* v. *Public Prosecutor* [2] which was stated in these words:—

"In our view the law as to the admissibility of retracted confessions in evidence is clear, and put shortly it is that an accused person can be convicted on his own confession, even when it is retracted, if the court is satisfied of its truth. We do not agree with those Indian decisions which lay down that before a person can be convicted on his retracted confession there must be corroborative evidence to support it."

Applying this principle to the facts of the present case we cannot but arrive at the same conclusion as the trial judge who after considering the whole of the evidence "was convinced that the confessions made by the two accused were true." Let us examine the facts. There was the evidence of the bus conductor, which the trial judge accepted, who identified the appellants as being near MacDonald House at the time of the explosion. There was the evidence that they were found in Malaysian waters, where there was no valid reason for them, as Indonesians, to be at a time when Indonesia was confronting Malaysia. They gave evidence that they had been ordered by a superior officer to proceed to an island off Singapore in Malaysian territory to meet a Chinese who would give them a boat laden with goods to take back to Indonesia and that while on this journey their small boat collided with an object and sank. This was a most improbable story having regard to the fact of armed confrontation and one which the trial judge disbelieved. We then have this picture. At a time when Indonesia was confronting Malaysia, a non-military building in Malaysian territory was badly damaged as the result of an explosion in which between 20 to 25 lbs. of explosives of the nitro-glycerine group had been used. At the time of this explosion and very near the scene of this explosion were two Indonesians. Two Indonesians were rescued three days later in Malaysian waters. They turned out to be the same two Indonesians whom a witness, accepted as a witness of truth by the trial judge, saw near the scene immediately before the explosion occurred. They confessed that they were responsible for this explosion. Later on in court they retracted their confessions and gave a reason why they were in Malaysian waters at the time of their capture, which reason to say the least was highly improbable. They also gave reasons why they confessed to something untrue, which reasons were disbelieved by the trial judge who also held that their confessions had been voluntarily made. From this picture we are satisfied that the trial judge notwithstanding the confessions were retracted was entitled to come and amply justified in coming to the conclusion that the confessions were true and in convicting the appellants.

We accordingly dismiss the appeals and affirm the convictions and the sentences.

Appeals dismissed.

Solicitors: *A. J. Braga & Co.*